No. 82-5105

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

BRUCE THOMAS PHILLIPS BEING HELD PRISONER AS: WILLIAM JOHN HASLEM — Petitioner-Appellant

v.

RONALD C. MARSHALL SUPERINTENDENT SOUTHERN OHIO CORRECTIONAL FACILITY — Respondent-Appellee

ON APPEAL FROM THE SUPREME COURT OF OHIO

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the State of Ohio is allowed to violate the Petitioner-Appellant's U.S. Constitutional Rights by incarcerating him and depriving him of his liberty by placing him in prison without any form of due process of law requirements of the U.S. Constitution under the 5th & 14th amendments?

2. Whether the Ohio Supreme Court is allowed to disregard the United States Constitution, the Ohio law, and the basis for it's own existance as laid down by the Ohio Legislature in the form of statutes, and in doing so allows the State of Ohio to violate the U.S. Constitutional rights of the Petitioner-Appellant?

3. Whether the Ohio Supreme Court is allowed to disregard the Common Laws, The Ohio Constitution, and it's own statutes (Ohio Revised Code) in allowing the state to violate the Petitioner-Appellant's U.S. Constitutional Rights?

4. Whether the Ohio Supreme Court can arbitrarily award one lower court ruling res judicata and not award res judicata to another lower court ruling when both court rulings were duly litigated in the same lower court, Cuyahoga County Court of Common Pleas, and both rulings were pursuant to statute authority, and both rulings were concerning the same person, when Ohio Constitution Article II sec. 26 requires uniform operation of the law, and by doing so permits the Petitioner-Appellant's U.S. Constitutional Rights guaranteed under the 5th & 14th amendments of the U.S. Const. to be rendered invalid?

5. Whether the Ohio Supreme Court is allowed to arbitrarily disregard and refuse to recognise the basic constitutional rights of the Petitioner-Appellant as covered in the U.S. Constitution 5th & 14th amendments in its decision to dismiss the Petitioner-Appellant's Petition for Writ of Habeas Corpus under O.R.C. 2725.04 which is in effect, rendering invalid the 5th & 14th amendments of the U.S. Constitution?

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OPINIONS BELOW

1. On May 26, 1982 Petitioner-Appellant's case was dismissed by Ohio Supreme Court with no opinion. (A.1)

2. On June 23, 1982 Petitioner-Appellant's Motion to Reconsider was dismissed by Ohio Supreme Court with no opinion. (A.2)

JURISDICTION

This is an appeal from an erroneous decision delivered by the Ohio Supreme Court.

The grounds on which jurisdiction to this court is invoked are 5th & 14th amendment violations of the Petitioner-Appellant's U.S. Constitutional rights guaranteeing due process and equal protection of law.

The Petitioner-Appellant raised these violations in the Ohio Supreme Court by Petition for Writ of Habeas Corpus which was filed in that court on March 8, 1982 as case #82-371 under Ohio Revised Code 2725.04 et. seq. (A.12-15) as a original action.

No responsive pleading was filed by Respondent-Appellee and on May 26, 1982, this action was dismissed on Respondent's Motion to Dismiss. (A.1)

On June 8, 1982, Petitioner-Appellant filed a timely Motion to Reconsider, pursuant to that courts rules respecting rehearings.

On June 23, 1982, Petitioner-Appellant's timely Motion to Reconsider was dismissed without opinion. (A.2)

On June 28, 1982, Petitioner-Appellant's timely Notice of Appeal was filed in the Ohio Supreme Court to the order of dismissal of case 82-371. (A. 3)

The time for Notice of Appeal to this court is found under this courts Rule 11.3. The notice of appeal complied with this court's Rule 10 sec..1& .2 and proof of service was conformed to in the manner prescribed under this courts Rule 28.3.

The jurisdiction of this court is believed to be conferred under Title 28, United States Code, section 1257 (1)[1] which states:

> (1) By appeal, where is drawn in question validity of a treaty or statute of the U.S. and the decision is against it's validity.

Since this was an <u>original action</u> originating in the Ohio Supreme Court, and directly affects the Petitioner-Appellant's U.S. Constitutional Rights, this court has

[1] No other Petitioner-Appellant is involved.

Jurisdiction( ) order to properly afford( )e Petitioner-Appellant effective appellate review, due process of law, justice & fairness and equal protection of the laws, because the only adequate and effective remedy or recourse open to the appellant, to afford him appellate review pursuant to an adverse decision from the highest state court is by appeal to the U.S. Supreme Court as the following case cites sustain:

> "Only the U.S. Supreme Court is authorized to review on direct appeal the decision of state cts."
> Lecci v Cahn, 1974, 493 F2d 826
>
> "Where state courts have erred, the proper form for a appeal is the U.S. Supreme Court."
> Aristocrat Health Club of Hartford v Chaucer
> 451 F Supp 210
>
> "No Court of the U.S. other than U.S. Supreme Court can entertain a proceeding to reverse or modify a state court judgement which is in error."
> Adkins v Underwood, 1974, 370 F.Supp 510
>
> "Conventional notions of finality in criminal litigation whether a decision of the highest state court on a federal issue is a "final judgement" or "decree" within the meaning of this section limiting Supreme Court review to final judgement or decree of the highest court of the state"
> Cox Broadcasting Co. v Cohn, 1975, 95 S.Ct. 1029

In this instant case, the Appellant's fundamental Federal rights are denied by Ohio Supreme Courts illegal failure to uphold final judgement/decree, litigated pursuant to Ohio law, and as such, the U.S. Supreme Courts judgement may be invoked as the following cases sustain:

> "Whether state court denial to rights asserted under local law protection guaranteed by U.S. Constitution is question on which Supreme Courts judgement may be invoked."
> Demorest v City Bank Farmenrs Trust Co., 1944
> 64 S.Ct. 384
>
> "Where asserted federal right is denied, the sufficiency of grounds of denial is for the United States Supreme Court to decide."
> Angel v Bullington, N.C., 1947, 67 S.Ct. 468
>
> "Civil litigant may seek review in the U.S. Supreme Court of any federal claim properly asserted and rejected by state court."
> Huffman v Pursue Ltd, Ohio 1975, 97 S.Ct. 468
>
> "Federal question decided by Oregon Supreme Court was subject to final determination in the U.S. Supreme Court."
> Parker v Gladden, 1966, 87 S.Ct. 468
>
> "The Supreme Court will review or independently determine all questions on which a federal right is necessarily dependent."
> U.S. v Pink, N.Y. 1942, 62 S.Ct. 552

prive[illegible]y a state court of fundam[illegible]al right secured by federal constitution, an independent examination of facts by the Supreme Court may be had."
Craig v Harney, 1947, 67 S.Ct. 1249

"So far as a judgement of a state court against the validity of an authority claimed by defendant under the United States, necessarily involved the decision of questions of law, as distinguished from questions of fact, it must be reviewed, whether that question depends upon the Constitution, laws, or treaties of the United States, or on local laws, or upon principles of general jurisprudence."
Stanley v Schwalby, Tex. 1896, 16 S.Ct. 754

"United States Supreme Court must decide whether it has jurisdiction in a particular case and must determine whether the federal question involved was necessarily passed upon by the state court, and such determination must rest upon examination of the record."
Honeyman v Hanan, N.Y., 1937, 57 S.Ct. 350

Petitioner-Appellant's Writ of Habeas Corpus was dismissed by Ohio Supreme Ct's. erroneously sustaining (A 1) Respondents Motion to Dismiss (R) & by this erroneous dismissal Ohio Supreme Court has evaded U.S. Const. issues asserted by appellant, which are [illegible] of due process of law & equal protection of law as guaranteed by 5th & 14th amendments of the U.S. Const. (Pg.4) as Petitioner-Appellant has not been convicted in any court of law before being placed in Ohio prison on or about Sept. 30, 1981.

The dismissal was erroneous (A.1) because Supreme Court of Ohio did not uphold the valid and unvacatable judgement/decree (A.4) rendered by Cuyahoga Cnty. Common Pleas Ct., which is a constitutionally provided for court of law-under the Ohio Const. Art. IV sec. 1 & 4, A,B, & C (Pg.5), decreeing the death of William John Haslem for all purposes under the law of the State of Ohio, when this court judgement/decree was duly litigated pursuant to law of Ohio-O.R.C. 2121.01 et. seq. (A.6-11) and was unvacatable as of 6/6/81. And by not upholding this judgement (A 4) the Supreme Ct. Of Ohio violated Art. II sec. 26 (Pg.5) of Ohio Const., which mandates that Ohio laws have uniform operation throughout the state.

By evasion of Constitutional issues Appellant is entitled to invoke judgement of U.S. Supreme Ct as the following supports:

"Whether state court is basing decision on nonfederal grounds, has thereby sought to evade constitutional issue, is a question on which litigant is entitled to invoke judgement of Supreme Court, though existance of claimed right for which constitutional protection is claimed depends on state law."
Fox River Paper Co. v Railroad Commission of Wisconsin, Wis. 1927, 47 S.Ct. 669, 274 U.S. 651

"The d[illegible] rests on the United Stat[illegible] Supreme Court to dec.de for itself facts or constructions upon which federal Constitutional issues rest."
Kern-Limerick v Scurlock., Ark. 1954. 74 S.Ct. 403

"Whether state court denial to rights asserted under local law protection guaranteed by U.S. Constitution is question on which Supreme Courts judgement may be invoked."
Demorest v City Bank Farmers Trust Co., 1944, 64 S.Ct. 384

Petitioner-Appellant submitted prime facie evidence [1] to Ohio Supreme Court of his illegal imprisonment by the warden of the penitentiary where he is confined, in his petition for Writ of Habeas Corpus (R. orig. petition Pg. 11 ec.5), the valid & unvacatable court judgement/decree, decreeing William John Haslem, the"alleged escapee" legally dead for all purposes under the law of the State of Ohio (A.4) & this judgement is prime facie evidence that appellant is not and could not be the "alleged escapee" Haslem, whose sentence for crime appellant is illegally being forced to serve. (A.5)

Ohio Supreme Court erroneously dismissed appellant's Petition for Writ of Habeas Corpus (A.1) on Respondent's Motion to Dismiss.(R)

This erroneous dismissal by Ohio Supreme Court does not invaladate this unvacatable judgement (A.4) and this judgement is entitled to full faith & credit in Federal Courts as supported by the following cases:

"a decision in state court relating to jurisdiction either of person or subject matter is entitled to full faith & credit in courts of another state or in Federal Courts."
City of Buffalo v Plainfield Hotel Corp. C.A.N.Y. 1949. 177 F 2d 425. cert. denied 79 S.Ct.795

Gart v Cole. D.C.N.Y. 1958. 166 F.Supp 129 affirmed 263 F2d 244. cert. denied 79 S.Ct. 898

Judgement of Ill., Ct. declaring as legally dead person who had disappeared seven years earlier was entitled to full faith & credit in Federal Dist. Court, where declaration had been made agreeably with statute, common law, practice and usage in Ill.
Rawley v U.S. 277 F. Supp 817

The U.S. Constitution requires that one state give full faith & credit to another states court judgements when those judgements are based on the legislated laws of that state. In this instant case we are concerned with the legislated law of Ohio & valid, unvacatable judgement (A.4) rendered pursuant to this law & the refusal of Ohio Supreme Ct. to award full faith and credit to its own lower state court judgement.

[1] see A-11-A

The courts of sister states of Ohio & Federal courts are required by ART. IV of the U.S. Const. to give full faith & credit to the death decree (A 4) of William John Haslem, unless it is repugnant to their own laws; under 2121.05 C (A 6) insurance companies must pay on life insuamnce policies, and the assets of the decedent must be distributed, and the decedents last will & testament shall be probated, & under 2121.04 C (A 7) the decedent's marriage is disolved; under 2121.04 B (A 7) the decedent's death shall for all purposes under the law of this state be regarded as having occured on the date of the decree; & under 2121.08 A (A 10) the decree is unvacatable after a three-year period from the date of the decree; & by the specific language of O.R.C. 2121.01 (A 6-10) & the intent of Ohio legislators in drafting this law, William John Haalem is dead for all purposes under the law of the State of Ohio.

The Supreme Court of Ohio has refused to uphold Ohio law by dismissing Appellant's Petition for Writ of Habeas Corpus (A11) and has permitted the ongoing violation of Appellant's U.S. Const. rights guaranteed by the 5th & 14th amendments of the U.S. Constitution by forcing him to serve the sentence of a person who he can not be, as that person is legally dead for all purposes under the law of this state.

Pursuant to the Constitution of the State of Ohio, Art II sec. 26 (Pg.5) the Ohio Supreme Court must uphold the laws of the State of Ohio, it can not ambiguously deny recognition of Ohio's own legislated law, as that court has done on May 26, 1982 by dismissal of Appellants case #82-371 in that court (A 1) for their is nothing more corrosive to a government than for a court to refuse to recognise its own laws.

Ohio Supreme Courts inconsistency in upholding valid court judgements litigated pursuant to Ohio Law & failure to give full faith & credit to this judgement (A 4) has resulted in U.S. Constitutional violations of Petitioner-Appellant's 5th & 14th amendment rights, therefore, appellate review should be granted in this case.

Petitioner-Appellant asserted violations of his fundamental rights, of due process of law, and equal protection of law, which are guaranteed to him by the 5th & 14th amendments of the U.S. Constitution, in his Petition for Writ of Habeas Corpus (R.Pg. 1 orig. Pet.) and presented prime facie evidence, to the Ohio Supreme Court of his illegal imprisonment by the Warden of the prison where he is confined, that he was not, nor could he be, the person whose sentence he was being forced to serve, namely, the valid & unvacatable death decree of the "alleged escapee" Haslem. (R. Pg. 11 ex. 5 orig. Petition) but Ohio Supreme Court dismissed this case (A.1) on Respondents Motion to Dismiss for failure to state a claim for which relief could be granted. (R. Respondents Motion to Dismiss)

A motion to dismiss, is not a responsive pleading as the following supports:

Richardson v U.S., 1964, 336 F 2d 265

Conley v Gibson, 1958, 78 S.Ct. 99

therefore, Ohio Supreme Court did not require an answer to Petitioner's allegations by the Warden of the penitentiary where Petitioner-Appellant is illegally imprisoned, therefore, this court (U.S. Supreme) should regard Petitioner-Appellant's allegations as true, as the following supports:

> "Where Supreme Court of Illinois dismissed habeas corpus petitions without requiring an answer by warden of the state penitentiary where petitioners were confined, United States Supreme Ct. must assume that petitioner's allegations are true."
> White v Ragan, Ill., 1945, 65 S.Ct. 978

Petitioner-Appellant raised these questions of the denial of his fundamental rights and allegations of his illegal incarceration in the proper manner as the following supports:

> "The great and central office of the Writ of Habeas Corpus is to test the legality of a prisoners current detention."
> Walker v Wainwright, 88 S.Ct. 962

Petitioner-Appellant's allegations of violations of his fundamental Federal Rights guaranteed by the 5th & 14th amendments of the U.S. Constitution were properly raised and were squarely before the Ohio Supreme Court (R. orig. Pet. for Writ of Habeas Corpus) & (R. Petitioner's Motion to Reconsider) yet, Ohio Supreme Court dismissed this case (82-371) with no

opinion (A.1 & 2) & when questions properly raised before a state court, they may come to the U.S. Supreme Ct. for decision as the following supports:

"Every question arising under the Federal Const. may, if properly raised in a state court, come ultimately to the U.S. Supreme Ct. for decision."
Hague v Committee for Industrial Orginazation, N.J., 1939, 59 S.Ct. 954

"Where a right is claimed in a state court arising under a statute of the U.S., a question is presented reviewable by the Supreme Court of the United States."
Supreme Lodge, etc. Knights of Pythias of North America ets. 1912, 59 So. 88 102 Miss 280

"Whether claims are based on a federal right or are merely of local concern is a federal question on which the U.S. Supreme Ct., and not the Supreme Ct of state has final auth.
Angel v Bullington, N.C. 1947, 67 S.Ct. 657

The issues involved in this appeal are clear-they involve only law, and judgements at law.

And the laws involved are the laws of the United States

Constitution: Amendment 5-due process of law.....(Pg. 4)
" 14-equal protection of law.....(" 4)

And the laws of the State of Ohio:
O.R.C. 2121.01 et. seq.....(A6-11)
OAG No. 3053.....(Pg.7)
Ohio Common Law.....(Pg.7)
Cuyahoga Cnty. Common Pleas Ct. judgement/decree, duly litigated pursuant to O.R.C. 2121.01.....(A. 4)
Constitution of Ohio Art. II sec. 26, which mandates that Ohio Law be upheld in the State of Ohio.....(Pg. 5)

And the erroneous judgement of dismissal by the Ohio Supreme Court which is against the validity of all the laws of Ohio and the constitutions set out above.....(A1 & 2)

And by the failure of Ohio Supreme Court to uphold the law, and the judgement, and the constitutional provisions above, this case must be reviewed as the following supports:

"So far as a judgement of a state court against the validity of an authority claimed by defendants under the United States necessarily involves the decision of questions of law, as distinguished from questions of fact, it must be reviewed, whether that question depends upon the Constitution, laws, or treaties or the United States, or on local laws, or upon principles of general jurisprudence."
Stanley v Schwalby, Tex. 1896, 16 S.Ct. 754

"Only questions of law, apparent on the record can be considered, and there can be no inquiry whether there was error below in dealing with questions of fact."
Behn, Meyer & Co. v Campbell & Co., Tauco, Phillipine Islands, 1907, 27 S.Ct. 502

CONSTITUTIONAL PROVISIONS AND STATUTES THAT THIS CASE INVOLVES

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury; except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, wherein they reside. No State shall make or enforce any law which shall abridge the priveleges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ohio Constitution

> Article I
> Section 2. Right to alter, reform, or abolish government, and repeal special priveleges.
>
> All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special priveleges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.
>
> Section 16. Redress in courts.
>
> All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Ohio Constitution

Article IV
Section 1. In whom judicial power is vested.

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.

Section 4. Common pleas court.

(A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interest of the fair, impartial, speedy, and sure administration of justice each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas courts of all counties in the districtas the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge untilselection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the supreme court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justicable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

Ohio Constitution

Article II
Section 26. What laws to have a uniform operation.

All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act except such as relates to public schools, be passed to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

Ohio Revised Code Section 2121. et. seq.

2121.01 Eff. 9-30-74 (in part)

(A) Except as provided in division (B) of this section a presumption of the death of a person arises:

(1) When the person has disappeared and been continuously absent from his place of last domicile for a five year period without being heard from during the period:

(2) When the person has disappeared and been continuously absent from his place of last domicile without being heard from and was at the begining of his absence exposed to a specific peril of death, even though the absence has continued for less than a five year period.

2121.02 Eff. 9-30-74 (in part)

(F) The complaint shall cause to be advertised once a week for four consecutive weeks in a newspaper published in the county, the fact that the complaint has been filed toghether with a notice that on a day certain, which shall be at least four weeks after the last appearance of the advertisement, or after the final publication where any d defendent is being served by publication, which ever is later, the probate court will hear evidence relevant to the allegations of the complaint.

2121.03 Eff. 9-30-74

At the hearing the probate court shall hear such legally admissable evidence as is offered for the purpose of ascertaining whether the presumption of death is established, no person shall be disqualified to testify by reason of relationship as husband or wife to the presumed decedent, or by reason of an itterest in the presumed decedent, or by property or because of a right or interest under the terms of a contract, beneficiary designation, trust, or otherwise, arising by reason of the death of the presumed decedent.

2121.04 Eff 9-30-74 (in part)

(A) If satisfied that a presumption of death has been established, as provided in section 2121.01 of the Revised Code, the probate court shall so decree.

(B) The death of such presumed decedent shall for all purpose under the law of this state be regarded as having occurred as of the date of such decree.

2121.05 Eff 9-30-74 (in part)

(A) (in part): All facts pursuant to these proceedings shall be as valid as if the presumed decedent were in fact dead.

2121.08 Eff. 11-1-77 (in part)

(A) in part): The probate court may at any time within a three-year period from the date of the decree establishing the death of a presumed decedent upon proof satisfactory to the court that the presumed decedent is in fact alive, vacate the decree establishing the presumption of his death.

"Proceedings may be instituted under this section to have legally presumed dead an inmate of a state institution who has escaped and not been heard from for seven or more years and money on deposit in the name of the superintendent of such state institution, as trustee for such inmane, may be closed out and distributed according to law after a lega l presumption of death has been made out."
1934 OAG No. 3053 1/

"Common law rule as to the presumption of death arising seven years after the date of disappearancd has not been abrogated by the 'presumed decedents Act':

Blythe v Vail, 11 OO 393 (CP)

"While the common law rule as to the presumption of death does not fix the date of death, yet, in the absence of any evidence to the contrary, the date of death must be presumed to be at the end of the seven year period."
Rice v Lumley, 10 O.S. 596

Moressy, Adm., v Smith, Gdn.m 39 O.L.R. 329 (App)

1/OAG means 'Ohio Attorney General Reports and No, 3053 is valid Ohio Law.

STATEMENT OF THE CASE

Petitioner-Appellant, Bruce Thomas Phillips, was placed in prison by the officials of the State of Ohio on or about Sept. 30, 1981 without any form of Due Process of Law or any legal proceedings what-so-ever under the name of william John Haslem, whom he is not.

The person william John Haslem was sentenced to imprisonment by Ohio's Common Pleas of Cuyahoga County in 1966. (A.5)

William John Haslem allegedly escaped from a Ohio prison on Feb. 27, 1969 and was not seen, nor heard from since.

On Feb. 27, 1976 William John Haslem was dead according to the common Law of Ohio. (Pg.7)

On June 6, 1978 Common Pleas Court of Cuyahoga County Ohio rendered judgement/decree declaring William John Haslem legally dead for all purposes under the law of this state (A.4) as a result of proceedings instituted in that court pursuant to Ohio Revised Code 2121.01 et. seq. which is called the 'Ohio Presumed Decedents Act' (A.6/10) instituted by the family of William John Haslem.

Cuyahoga County Common PLeas Court judgement/decree (A.4) was unvacatable as of June 6, 1981 pursuant to requirement of Ohio Revised Code 2121.08 (A.10)

On March 8, 1982 Petitioner-Appellant's Petition for WRIT OF HABEAS CORPUS was filed in Ohio Supreme Court as an original action under Ohio Revised Code 2725.04 et. seq. (A.12-15) as case # 82-371 in which Petitioner-Appellant cited violations by the State of Ohio of illegal inprisonment by the State of Ohio in violation of Petitioner-Appellant's rights which are guaranteed by the 5th & 14th amendments of the U.S. Constitution.

Respondent-Appellee filed Motion to Dismiss on 3/29/82.

Petitioner-Appellant's Brief in Opposition to Respondent's Motion to Dismiss was filed in that court on 4/12/82.

Ohio Supreme Courts Order of dismissal of this case on the Respondents Motion to Dismiss was entered on 5/26/82, to which order this appeal is taken from. (A.1)

Petitioner-Appellant's Motion to Reconsider was timely filed in the Ohio Supreme Court on 6/8/82, on 6/23/82 this Motion to Reconsider was dismissed without opinion. (A.2)

Dismissal of Petitioner-Appellant's Petition for Writ of Habeas Corpus on Respondent's Motion to Dismiss (R) for failure to state a claim (R) was an erroneous decision because Petitioner-Appellant very definitely did state a claim upon which relief could be granted, in that, the Ohio Supreme Court did not uphold the legislated law as set forth in O.R.C. 2121.01 et. Seq. (A.6-11) and therefore allowed the U.S. Constitutional rights of the Petitioner-Appellant, which are guaranteed by the 5th & 14th amendments of the U.S. Constitution (Pg. 4) to be continued to be violated, and in in effect, The Ohio Supreme Court is rendering invalid the U.S. Constitutional rights of the Petitioner-Appellant by this erroneous decision. (A. 1)

The Petitioner-Appellant very definitely stated a relief that could have been granted, if the Ohio Supreme Court would have upheld the legislated law of Ohio, as the mandate for this courts very existance demands, and that is to be released from prison so that his rights not to be deprived of his liberty without due process and equal protection of the law are not violated, as they are now.

Petitioner-Appellant presented prima facie evidence to the Ohio Supreme Court in his original Petition for Writ of Habeas Corpus (R. orig. petition Pg. 11 ex. 5) that he was not, nor could be the'alleged escapee' Haslem as that person was declared legally dead for all purposes under the law of the State of Ohio (A.4) and pursuant to the statute law of the state of Ohio O.R.C 2121.01 et. seq. (A. 6-11) and the Ohio Supreme Court has no authority under Ohio law, (Art. II sec. 26 Ohio Const. Pg. 5) not to uphold Ohio law.

Pursuant to the law of the State of Ohio ORC 2121.01 (A 6-11) & unvacatable judgement/decree (A 4) the State of Ohio has no jurisdiction over the alleged escapee-Haslem & no jurisdiction over Petitioner-Appellant in relation to any violation of law & Appellant is illegally imprisoned in violation of his 5th & 14th amend. U.S. Constitutional rights.

Petitioner-Appellant brought into question, the valid statute law of the United States, the 5th & 14th amendments of the U.S. Constitution (R. orig. petition pg. 1.) and this decision (A. 1) is against the valid laws of the United States.

Petitioner-Appellant's Notice of Appeal was filed (A.3) in the Ohio Supreme Court on 6/28/82 to that courts order of dismissal (A.1.) which was timely and in conformance with this courts Rule 10 sec .1 & .2 and proof of service complied to Rule 28.3.

The jurisdiction to this court is believed to be invoked under Title 28 United States Code 1257 (1)

STATEMENT OF WHY QUESTIONS
PRESENTED FOR REVIEW ARE SO
SUBSTANTIAL AS TO REQUIRE
PLENARY CONSIDERATION

Foundation of our nation is based upon the Declaration of Independence, the United States Constitution containing the Bill of Rights, Common Law, and justice and Fairness, as drafted by our forefathers to prevent injustice to the individual at the hands of Government.

As set forth in the Declaration of Independence:

> "all men are Created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the Consent of the Governed."
>
> and United States Constitutional Rights set forth in the amendments:
>
> 5th amendment (Pg.4) due process of law
> 14th " (Pg/4) equal protection of law

In this instant case, Petitioner-Appellant, Bruce Thomas Phillips, has been deprived of his liberty, without due process of law and placed in Ohio prison in violation of his U.S. Constitutional rights as covered under the U.S. Constitutions 5th & 14th amendments supra.

As stated above, liberty is one of our most prized possessions and a person cannot be deprived of his liberty without due process of law as covered under these amendments and the Ohio Constitution also supports this: (Pg.4)

Article I sec. 2, equal protection
" I " 16, due process.

In this instant case, the Petitioner-Appellant, Bruce Thomas Phillips has been deprived of his liberty without due process of law by the State of Ohio in that the State of Ohio has him in prison and the reason for the continuation of this is as follows:

1. By permitting the continued illegal imprisonment of appellant in violation of appellant's 5th & 14th amendment rights which guarantee due process & equal protection of law to him, under the U.S. Constitution by erroneously dismissing his petition for Writ of Habeas Corpus. (A.1)

2. Ohio Supreme Ct. erroneously dismissed appellant's petition for Writ of Habeas Corpus on Respondent's Motion to Dismiss (R) for failure to state a claim when Respondent had no valid contention in his Motion to Dismiss, and when pursuant to Ohio law 2121.01 et. seq. (A.6-11) and unvacatable judgement/decree (A.4) decreeing William John Haslem legally dead for all purposes under Ohio law, The State of Ohio had no jurisdiction over the "alleged escapee" Haslem, whose sentence for crime (A.5) appellant is being forced to serve, nor jurisdiction over appellant for any crime and by this erroneous dismissal (A.1) afforded no res-judicata to the unvacatable judgement/decree (A.4) decreeing Haslem legally dead for all purposes under the law of Ohio and yet afforded res-judicata to the same courts judgement of Oct. 27, 1966 sentencing Haslem for crime (A.5) when both judgements concerned the same person, and both judgements duly litigated pursuant to Ohio Statute authority, and both judgements litigated in the same court, The Cuyahoga County Common Pleas Court.

3. By erroneous dismissal (A.1) of appellant's petition for writ of Habeas corpus Ohio Supreme Ct. has also disregarded appellants rights to due process of law and equal protection of law guaranteed him by Ohio Constitution Art I sec 2 & 16 (Pg.4) and has disregarded the common law of Ohio (Pg.7)in addition to failing to uphold statute law O.R.C. 2121.01 et. seq. (A 6-11) and unvacatable judgement/decree (A.4) duly litigated pursuant to this statute law, and by Ohio Supreme Ct's failure to uphold the law and above judgement/decree, that court is in total violation of Ohio Constitution Art. II sec. 26 (Pg.5) which requires uniform operation of Ohio law throuought the State of Ohio.

decreeing the "alleged escapee" Haslem legally dead according to the clear & unambiguous language of O.R.C. 2121.01 (A. 6-11) when this statutes language is clearly reflective of its common law basis as the following supports:

"The common-law rule as to the presumption of death arising seven years after the date of dissappearance has not been abrogated by the presumed decedents' act."
Blythe v Vail, 11 OO 393 (CP)

And the death decree of William J. Haslem (A.4) also embodies common law terms in its specific meaning, "it is therefore ordered that the death of William John Haslem, presumed decedent, shall be regarded as having occurred on the 6th day of June, 1978 for all purposes under the law." and this statute and judgement, duly litigated pursuant to Ohio law may not be interpreted by courts in any other way than the language expressed in common law terms embodied in this statute & judgement as the following supports:

"Statute is not to be construed as making any inovation upon common law which it does not fairly express."
Robert C. Herd & Co. v Krawill Machinery Corp. Md. 1959, 79 S.Ct. 766

The constitutional Ohio statute O.R.C. 2121.01 (A.6-11) and duly litigated judgement/decree rendered pursuant to this statute (A.4) must be upheld by Ohio Supreme Ct. as the following supports:

"The plain words and meaning of a statute cannot be overcome by legislative history.
Gemsco, Inc., v Walling, 1945, 65 S.Ct. 605

"The plain meaning of a statute must be adopted, however severe the consequences."
Jay v Boyd, Wash. 1956, 76 S.Ct. 919

"It is duty of court to give effect, if possible to every clause and word of statute."
U.S. v Menasche, Puerto Rico, 1955, 75 S.Ct. 513

"A court in interpreting a statute may not depart from its clear meaning."
U.S. v Sullivan, Ga., 1948, 68 S.Ct. 331

"When terms of a statute are unambiguous, court may not speculate on probabilities of intention."
Brunner v U.S. Ga., 1952, 72 S.Ct. 581

"In interpretation of statute, it is presumed that legislature did not employ useless verbage and that each word has independent meaning.
Skovgaard v The Tungus, C.A.N.J., 1957, 252 F 2d 14, AFFIRMED 79 S.Ct. 503

"Courts are controlled by language of statute, and arguments as to policy of statute must be addressed to the legislature and not to the courts."
Morgenthau v Barrett, 1939, 60 S.Ct. 615

The person William John Haslem is legally dead for all purposes under the law of Ohio (A.4)by virtue of Ohio statute law 2121.01 et. seq. (A.6-11) and the judgement is unvacatable as required by Orc 2121.08A (A.10) and by virtue of the common law of Ohio (Pg.7) and appellant has presented this prime facie 1/ evidence in support of the fact that his rights guaranteed by the 5th & 14th amendments of the U.S. Constitution are being violated by the State of Ohio in that the warden of the penitentiary where he is confined is holding him in prison in violation of Ohio law and in violation of his U.S. Const. rights. This evidence was presented to Ohio Supreme Ct by Appellant Phillips in his original petition for Writ of Habeas Corpus (R. orig. pet. Pg.11 ex.5)in case #82-371.

Ohio Supreme Ct. erroneously dismissed Appellant Phillips (A.1) case, and refused to apply the doctrine of res-judicata to the valid& unvacatable judgement/decree, decreeing the legal death of the'alleged escapee' Haslem (A.4) for all purposes under the law of the State of Ohio, when this judgement/decree (A.4) was rendered pursuant to the law (O.R.C. 2121.01 et. seq.) (A.6-11) by a court of competent jurisdiction, and the following cases support the fact that res-judicata must apply:

Kemp v Birmingham News Co. 608 F2d 1049-52

Continental Casualty Co. v Canadian Univers[illegible] Co. 605 F2d 1340-43

Morris v Jones, Ill. 1947. 67 S.Ct. 451

Petitioner-Appellant can envision no greater violation of the fundamental rights of citizen than to be incarcerated without due process of law & equal protection of law, as in this instant case, nor the refusal of the highest court of this state to utterly disregard the U.S. Constitution, Ohio Constitution, Ohio law, Ohio Common law, Ohio statute law 2121.01 (A.6-11) which was mandated into Ohio law by the Ohio General Assembly when that legislative bodies express purpose & intent in this laws enactment is specifically embodied in the unambiguous and clear language of this law. And the Ohio Supreme Ct. to utterly disregard the duly litigated & unvacatable court judgement/ decree (A.4) rendered pursuant to Ohio law, as the basis for that courts existance is to uphold the law.

1/see A-11-A

The General Assembly of the State of Ohio enacted the Presumed Decedents' Act, O.R.C. 2121.01 et. seq. (A. 6-11) and this law conferred judicial power upon the Courts of this state to render judgement/decrees pursuant to this law as the following supports:

> "a law that confers upon a court the authority to render a judgement or decree which shall be judicial settlement of the question in controversy, it is a law conferring judicial power:"
> State v Cox 87 OS 313, 101 NE 133

And the Presumed Decedents Act, O.R.C 2121.01 et. seq., is applicable to a person who has escaped from a state institution, as the following Ohio law supports:

> "Proceedings may be instituted under this section to have legally presumed dead an inmate of a state institution who has escaped and not been heard from for seven or more years...etc.
> 1934 OAG No. 3053 (Pg. 7)

On 6/6/78, the Common Pleas Ct. of Cuyahoga Cnty. Ohio rendered judgement/decree, declaring the alleged escapee Haslem, legally dead for all purposes under the law of this state (A.4), pursuant to statute law O.R.C. 2121.01 et. seq.

On 6/6/81, more than twelve years after the "alleged escapee" Haslem, was last seen or heard from, this judgement/decree was unvacatable under the statute law of Ohio 2121.08A(A10)

Petitioner-Appellant petitioned Ohio Supreme Ct. for writ of habeas corpus in which he alleged violations of his 5th & 14th amend. U.S. Const. rights, resulting from his illegal imprisonment by the warden of the prison where he is confined, but Ohio Supreme Ct. erroneously dismissed his petition (A.1) and by doing so that Ct. failed to uphold the law, O.R.C. 2121.01 et. seq & unvacatable judgement/decree (A.4) rendered pursuant to this law, and this erroneous dismissal contravenes the statute law enacted by the General Assembly of Ohio and Ohio Supreme Ct. must uphold this valid judgement as the following supports:

> "If the general assembly has power to enact a statute, question of its propriety or wisdom are not for the courts."
> Pohl v State, 102 OS 474
> Brinkman v Drolesbaugh, 97 OS 171

And Ohio Supreme Ct. by this erroneous dismissas (A.1) is in violation of Ohio Const. Art. II sec. 26., (Pg.5) which requires uniform operation of this law throughout this state.

Probably the most underlying importance of this instant

case: Bruce Thomas Phillips being held prisoner as: William John Haslem -v- Ronald C. Marshal Superintendant SOCF

is not that individual citizen is illegally imprisoned in Ohio.

But the far reaching, and profound implication is, that by Ohio Supreme Court's failure to uphold a valid court judgement/decree, and in this case, an unvacatable judgement/decree (A.4), it has rejected the basis of a free society, and that basis is law.

What is the purpose of any law, if it is not to be upheld?

What is the purpose of any constitution, if it is to be regarded only as a group of meaningless words , by courts?

What is the necessity of court judgements, if they are regarded as not worth the paper they are printed on by courts?

If this is the case, why in fact, do we even need courts ?

And what of the common law, which is the basis of all of our law, should that too, be scrapped?

Wherein then is the line drawn between a free society and an enslaved society? Is it one erroneous judgement, one hundered, or one hundered thousand erroneous judgements?

Our forebearers, the drafters of the U.S. Constitution gave us a clue as to where that line was drawn:

> "nor shall any person be deprived of life, liberty or property without due process of law."

In researching this case, Appellant came accross, in Federal Reporter 2d series, vol. 466, a memorium eulogy dedicated to the late Honorable J. Earl Major, Senior Circuit Judge of the 7th circuit U.S. Ct. of Appeals, delivered by Chief Judge Swigart of that circuit. Judge Swigart quoted the words of Judge Kenesaw Mountain Landis in characterizing Judge Major, and those words:

> "To him there was no more solemn thing than the entry of judgement taking from citizen his life, liberty or property."

In this instant case, Appellant Phillips was before the bar of justice in Ohio, The Ohio Supreme Court, with an unvacatable court judgement, and showed that court he was imprisoned illegally, as Haslem, the one sentenced for crime, is dead; and presented the unvacatable judgement to that court, of the legal death of William J, Haslem under Ohio law, and judgement of the Supreme Court of Ohio-dismissed, without opinion.

The legal death of a person under Ohio law must be taken exactly as the General Assembly intended, that he is legally dead for all purposes under the law of this state.

And in the case of "alleged escapee" Haslem, it means his legal death has the same effect as it would have as to that of any other person-in that his accrued assets & liabilities are cancelled, and when under the law of the State of Ohio O.R.C. 2121.01 et. seq. (A. 6-11) he has been legally decreed dead (A.4) by a court of competent jurisdiction, the state, through its agents, can not resurrect him for any purpose, when the decree of his death is unvacatable under the law of the State of Ohio O.R.C. 2121.08 A (A.10).

As the "alleged escapee" Haslem is legally dead, that person no longer legally exists under the law of Ohio, and the State of Ohio can not attqach jurisdiction to the Appellant for the liabilities of the legally dead "allegged escapee", and the Appellant Phillips is entitled to equal protection of the law & due process of law as guaranteed to him by the 5th & 14th amendments of the U.S. Constitution as the Appellant can not be the legally dead "alleged Escapee" Haslem, and he is being illegally detained in prison by the warden of the penitentiary where he is confined.

As the citizens of the State of Ohio must abide by the law of the state, so must the Supreme Court of Ohio abide by the law & uphold judgements rendered pursuant to the valid & constitutional law of the State of Ohio (A.4) as the Ohio Constitution mandates by Art. II sec. 26 (Pg.5) which requires that laws of "general nature" must have uniform operation throughout the state.

As a United States citizen, Petitioner-Appellant has unalienable rights guaranteed to him by the U.S. Constitution under the 5th & 14th amendments, which in part state:

> "nor be deprived of life, liberty, or property without due process of law."
>
> -and-
>
> "nor shall any state deprive to any person within its jurisdiction, due process of law, nor deny to any person equal protection of the law."

and these unalienable rights can not be abbriged, denied, or, in any way be violated by any state of this country.

But, Petitioner-Appellant, at this very moment, is illegally imprisoned in the State of Ohio in the name of a person William John Haslem, who, has been declared "legally dead, for all purposes under the law of the State of Ohio, when the U.S. Constitution stipulates that no citizen may be imprisoned without due process & equal protection of the law.

In The United States, the greatest of our citizens, The President of our nation, can be ejected from his office for the most insignificant of violation of law; because-

we are a country of law, and,

the law, in all cases, must be upheld,

even when it applies to the least significant of citizens, for

if the law is not upheld, we have nothing!

Petitioner-Appellant seeks plenary-appellate review for the erroneous dismissal by the Ohio Supreme Court for his Petition for Writ of Habeas Corpus for the injustice complained of, and humbly requests this Court to review the record, and the record will show, the invalid reasons for this dismissal, and the record will also show, extremely grave violations of the unalienable rights of a citizen of the United States, and when in violation of the 14th amendment of the U.S. Const. a state denies protection of these fundamental rights a case arises under the Constitution, laws, and treaties of the United States and it is the duty of the federal courts to

secure and protect those fundamental rights as required by Article 3 sec. 2, cl. 1 of the U.S. Constitution as the following supports:

> "Where constitutional rights are involved, it is duty of federal courts to secure their protection even though state courts may fail to do so in analogous situations.
> Goldman v Postal Telegraph, D.C. Del., 1943, 52 F.Supp 763

Respectfully submitted,

Bruce Thomas Phillips

Bruce Thomas Phillips Petitioner Appellant
Pro-Se & Forma Pauperis

being held prisoner as:
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